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Situation of human rights in the Democratic People's Republic of Korea

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Vitit Muntarbhorn.

Summary

The present report provides an analysis of the human rights situation in the Democratic People's Republic of Korea, particularly from the angle of sustenance (rights pertaining to food, nutrition and related matters); freedoms (rights pertaining to security of the person, humane treatment and justice); asylum (rights pertaining to refugees/those seeking refuge); vulnerability (rights concerning specific groups); and responsibility (rights concerning the responsibility of the State authorities to protect human rights and fundamental freedoms, and related accountability).

The current situation of human rights in the Democratic People's Republic of Korea is characterized by a number of key violations in a variety of fields. The environment for the promotion and protection of human rights was further undermined in 2006 by the various missile and nuclear tests carried out by the country in the face of global condemnation and subsequent Security Council resolutions imposing sanctions on the country. The atmosphere in 2007 proved to be more encouraging, with the reported disablement of the nuclear facility in the country and progress in the six-party talks, involving China, the Democratic People's Republic of Korea, Japan, the Republic of Korea, the Russian Federation and the United States of America.

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Taking stock of the human rights situation at the ground level in the country, however, regrettably it is the ordinary people of the Democratic People's Republic of Korea who suffer at the hands of the authorities and who bear the brunt of systematic and pervasive abuses.

The report addresses recommendations to both the Democratic People's Republic of Korea and the international community. They include a call to the Democratic People's Republic of Korea to abide by its international obligations under the various human rights treaties to which it is a party and by international law; to shift military expenditure to the human development sector and reallocate national resources to protect human rights and promote human security; to facilitate access to humanitarian aid, respect the need for monitoring to ensure that aid reaches target groups and build food security through sustainable agricultural development with broad-based people's participation; to reform its prison system, eliminate custodial violence and promote due process and the rule of law; to address the issue of abductions effectively; to enunciate a clear policy of not punishing those who leave the country without permission, desist from punishing returnees, and amend national laws and train its officials accordingly; to tackle the root causes leading to refugee outflows and to criminalize those who exploit them in the process of human smuggling, trafficking and extortion, while not criminalizing the victims; to protect the rights of women, children and other groups, in particular by addressing their vulnerable positions and ending discrimination; to act responsibly and accountably towards its population by preventing and curbing human rights violations in law and practice; and to enable the Special Rapporteur to enter the country to assess the human rights situation at the ground level and offer advice on needed improvements.

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I. Introduction

1. The Special Rapporteur warmly thanks all Governments, non-governmental organizations and international organizations which assisted him in carrying out his functions during the year.

2. The mandate of the Special Rapporteur was established in 2004 by the Commission on Human Rights by its resolution 2004/13. In 2006, the mandate was extended for one year by the newly formed Human Rights Council, which assigned the Special Rapporteur the task of preparing and submitting reports to both the General Assembly and the Council. The mandate encompasses a variety of questions relating to civil, political, economic, social and cultural rights, ranging from humanitarian aid (especially food aid) to asylum, abductions of foreigners and related transgressions. In late 2006, the Special Rapporteur also carried out a field visit to Japan, the Republic of Korea and Mongolia to assess the impact of the human rights situation in the Democratic People's Republic of Korea on those countries. The present report covers the situation until the middle of 2007.

3. On the constructive side, it can first be recalled that the Democratic People's Republic of Korea is a party to four human rights treaties: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; and the Convention on the Rights of the Child. It has also submitted reports under these treaties and has appeared before the various monitoring bodies established thereunder. Notably, in 2004, the Government invited the Committee on the Rights of the Child to visit the country.

4. Partly as a follow-up to the various concluding observations by the treaty bodies, the Democratic People's Republic of Korea has undertaken some key law reforms, such as revision of the criminal code and the criminal procedure code, in 2004 and 2005. In 2004, the authorities also published a legal compendium for public use. However, major challenges concerning the implementation of human rights remain.

5. The authorities have also allowed the presence of a number of United Nations agencies in the country and continue to work with them on various aspects of human development. For instance, the Government cooperates with the United Nations Children's Fund (UNICEF) on child-related programmes. The recent UNICEF report entitled "Analysis of the situation of children and women in the Democratic People's Republic of Korea"[1] notes that "the particular strength of the (country's) policy framework lies in its comprehensiveness, integration and consistency in addressing the interests of children and women. It has been aligned with the collective production system. The Government has proactively broadened and updated its laws and policies on an ongoing basis, also making an effort to harmonize with international innovations and standards".

6. Under the umbrella of the six-party talks, progress in the disablement of the nuclear programme of the Democratic People's Republic of Korea is welcome and is expected to have a positive impact on the human rights situation in the country. It will be recalled that, in February 2007, at the third session of the fifth round of the talks, the parties agreed upon "initial actions for the implementation of the joint

[1] Available from www.unicef.org/dprk/situationanalysis.pdf.

statement" calling for the disablement of the Yongbyon nuclear facility and other measures, as well as for parallel provision of energy and other assistance from other countries. By the middle of the year, it was reported that the disablement process was being implemented and the promised first batch of fuel oil assistance (50,000 tons) from other countries was arriving. Bilateral and other talks between the Democratic People's Republic of Korea and other key players were also being held through various groups on the following issues: denuclearization of the Korean peninsula; normalization of relations between the country and the United States of America; normalization of relations between the country and Japan; economy and energy cooperation; and the north-east Asia peace and security mechanism. Several of the issues covered by these talks have a direct bearing on human rights.

7. It is of interest to note that the meeting of the heads of delegation of the sixth round of the six-party talks in Beijing issued a press communiqué in mid-2007, which included the following points:

(a) The parties reiterated that they would earnestly fulfil their commitments outlined in the joint statement of 19 September 2005 and the agreement of 13 February 2007;

(b) The Democratic People's Republic of Korea reiterated that it would earnestly implement its commitments to a complete declaration of all nuclear programmes and disablement of all existing nuclear facilities;

(c) Economic, energy and humanitarian assistance up to the equivalent of 950,000 tons of heavy fuel oil would be provided to the Democratic People's Republic of Korea;

(d) All parties undertook to fulfil their respective obligations as outlined in the joint statement of 19 September and the agreement of 13 February in line with the principle of "action for action".

8. The Special Rapporteur continues to invite the Democratic People's Republic of Korea to respond to the mandate as a window of opportunity to engage with the United Nations. It is thus regrettable that, to date, the authorities of the country have declined to cooperate with the Special Rapporteur.

II. Situation of human rights

9. Despite the country's formal commitment to human rights through national laws and the ratification of international human rights treaties, the human rights situation remains grave in a number of key areas. It should be recalled that the country is under a non-democratic regime that adheres to a "military first" policy, which depletes national resources and creates budgetary distortions in favour of the ruling elite and militarization, in the face of many shortages and deprivations suffered by the population. In 2006, that quagmire was aggravated by various missile and nuclear tests carried out by the authorities, which led to global condemnation. These irresponsible and provocative acts undermined the possibility of aid from other countries, which reconsidered their contributions to the Democratic People's Republic of Korea. While progress was being made in the implementation of the above-mentioned "initial actions for the implementation of the joint statement", the Government also carried out various missile tests in 2007, which exacerbated its isolation.

10. Many violations in the field of civil, political, economic social and cultural rights persist in the country. Examples of violations are given in the paragraphs below.

A. Sustenance: rights pertaining to food, nutrition and related matters

11. As noted in the previous reports of the Special Rapporteur, the country has been suffering from a severe food shortage since the 1990s.[2] That shortage was caused by both natural disasters and mismanagement on the part of the authorities, aggravated by the overemphasis on militarization and failure to generate food security owing to unsustainable agricultural development. In the 1990s, the Government started to accept food aid from outside the country, particularly through the World Food Programme (WFP). In 2002, the authorities moved away from the age-old public distribution system, whereby the State provided rations to the people, to a more market-oriented experiment, whereby people were paid more wages and were expected to fend for themselves by gaining access to food through the market system. This led to major disparities owing to a substantial rise in food prices and the marginalization of various vulnerable groups in the process. However, in 2005, the authorities started to clamp down on the various markets by banning cereal trading, for fear of losing their grip on the population, and have since reintroduced the public distribution system.

12. In 2005/06, the authorities also demanded that the international agencies present in the country shift from humanitarian aid to a more development-oriented framework and, in the process, scaled down the presence of various foreign humanitarian agencies in the country. One consequence was a reduction in the monitoring of aid coming into the country. While the 2005 harvest was more bountiful than in previous years, in the middle of 2006 major floods wreaked havoc on the harvest, resulting in a severe food shortfall. In 2006, WFP began its two-year Protracted Relief and Recovery Operation, aimed at delivering food aid amounting to 150,000 tons of commodities to 1.9 million people at a cost of $102 million. Actual operations started in June 2006 on the basis of a letter of understanding with the authorities, principally targeting aid to women and young children. A number of factories now receive support in order to produce fortified biscuits and blended foods.

13. External aid has been less than forthcoming as a reaction to the missile and nuclear tests carried out by the country. By the end of 2006, WFP was able to reach 29 counties out of the projected 50 and was able to assist only some 740,000 beneficiaries. WFP had received only 12 per cent of the required funding, and available food stocks were expected to be exhausted by the second quarter of 2007.

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[2] See Human Rights Watch, "A matter of survival: the North Korean government's control of food and the risk of hunger", Human Rights Watch, New York, vol. 18, No. 3 (c) 2006. With regard to the political impact of the nuclear test and policy choices, see also International Crisis Group, "North Korea's nuclear test", Asia briefing No. 56, Seoul/Brussels, 13 November 2006; and Stockholm International Peace Research Institute and the Center for Security Studies at the Swiss Federal Research Institute of Technology, "Tools for building confidence on the Korean peninsula" (Stockholm/Zurich, 2007).

On a related front, the public distribution system was only able to fulfil part of the food and nutritional needs of the population and the food shortage has continued.[3]

14. According to a WFP food security report update of June 2007, on 26 June 2007, the Republic of Korea announced that a shipment of 400,000 tons of bilateral rice aid would be sent in July in response to the positive developments in the six-party talks. However, even with such recent confirmed food aid donations, the food deficit remains high (around 500,000 tons or 10 per cent of total annual food needs), notably with short-term supply problems. In terms of access to food, the attempts of the Government to revive the public distribution system in October 2005 led initially to some improvements, but the latest information indicates that distributions have returned to pre-revival levels, and do not reach the majority of the population. Owing to such problems, only a small proportion of the population in the Democratic People's Republic of Korea relies on Government rations as their primary source of food. While the national food economy has become increasingly marketized, cereal prices are constantly increasing. Since October 2006, cereal market prices in Pyongyang have increased significantly. For example, the price of imported rice, which is consumed by the poorest population, has increased by 26 per cent.

15. WFP has supported the establishment of a food security theme group in the country to promote inter-agency collaboration, although a key challenge is to collect data where increasingly limited access is given to humanitarian and development agencies to the poorest areas.

16. In June 2007, WFP was given food assistance worth over $20 million by the Republic of Korea for the Democratic People's Republic of Korea, which enabled it to bolster feeding programmes for schools, at-risk children, small children and pregnant women. The agency hopes to reach the projected 1.9 million people in the target group, thus doubling the current access to some 700,000 people.

17. These developments should be seen in the light of the continuing prevalence of malnutrition in the country. A survey carried out in 2004 by United Nations agencies found that 37 per cent of young children suffered from malnutrition, while one third of mothers were both anaemic and malnourished. While prospects for an improved harvest of cereal crops are favourable in 2007, there is still a serious food deficit in the country, amounting to about 1 million tons, and about one third of all North Koreans are struggling to make ends meet.

18. The shortage of food continues to have a major impact on the needy population, and the non-governmental sector has reported various deaths from starvation in 2007.[4] This situation is compounded by the decline in medical services and the shortage of medicines, fertilizers and electricity. Tuberculosis is also widespread.

19. It is important to underline the need to generate food security in the country, for which no foreign aid could be a substitute. A draft country programme was recently proposed by the United Nations Development Programme and the United Nations Population Fund, highlighting five priorities for 2007-2009: enhanced economic management; sustainable food security to improve the quality of life;

[3] FAO, "Crop prospects and food situation", No. 3, October 2006.

[4] *North Korea Today*, eighth edition, Research Institute for North Korean Society (Seoul, July 2007).

sufficient energy supply for economic development; social development to improve the quality of life of the people; and an improved environment for sustainable development (DP/DCP/PRK/2). Examples of projected activities include a sustainable rural energy development programme; the establishment of an agricultural databank; an agricultural seed development programme; the reduction of pre- and post-harvest losses; a demonstration project for an integrated mountain and watershed management system; an integrated environmental and early warning system for preventing environmental degradation and natural disasters; and a policy and technical base for small-scale generation of wind energy. However, support from the international community diminished in the wake of the furore caused by the arms tests in 2006, although the atmosphere in mid-2007 seems more encouraging.

B. Freedoms: rights pertaining to security of the person, humane treatment and justice

20. In recent years, there have been some legislative improvements which are expected to have a positive impact on the security of the human person. For instance, reforms of the criminal law noted earlier provide more certainty in the application of the law. For instance, in 2001:

> The UN Human Rights Committee in its concluding observations recommended that Article 10 of North Korea's Penal Code was incompatible with Article 15 of the International Covenant on Civil and Political Rights, which mandated the realization of "the principle of no criminality with prescribed laws". In the process of revising its Penal Code in 2004, North Korea has deleted the section allowing analogous interpretations and incorporated the principle of criminality based on prescribed laws. Article 6 of the Penal Code reads, "The State shall charge criminal responsibilities only in cases of crimes prescribed in the Penal Code". At the same time, the Penal Code is now much freer from a variety of unclear and nebulous expressions that had permitted disparate interpretations. The revised code defines more specifically various acts that constitute criminal activity under the law. As a result, the total number of articles in the code was expanded from 161 in 1999 to 303 in 2004. The number of articles defining various crimes also dramatically increased from 118 to 245, thereby delineating in more detail the criteria for determining punishable crimes.[5]

21. A large number of provisions concerning anti-State activities give rise to concern because of their excessively broad scope and the way that the regime might use such provisions to repress any form of political dissent. For instance, there are 14 types of "anti-State" and "anti-people" crimes; 16 types of crimes disturbing the national defence system; 104 types of crimes injurious to the socialist economy; 26 types of crimes injurious to socialist culture; 39 types of crimes injurious to

[5] See "White Paper on human rights in North Korea 2006", Korean Institute for National Unification (Seoul, 2006). See also the concluding observations of the Human Rights Committee: Democratic People's Republic of Korea (CCPR/CO/72/PRK).

administrative systems, and 20 types of crimes harmful to socialist collective life.[6] Several are punishable by the death sentence.

22. Given the repressive nature of the State and the Government's cult-based fiat, basic freedoms are markedly constrained. There are continuing reports of acts of violence committed by the State authorities, such as torture, public executions, persecution of political dissidents and substandard prison conditions, despite the legislative improvements noted above. There is a large variety of detention centres, ranging from those for political dissidents to those for common criminals, as well as re-education camps. They appear under various names, such as *gwanliso* (political labour camp), *gyohwaso* (long-term prison labour camp), *jipgyulso* (detention facility) and *rodongdanryundae* (labour facility). Those who have left the country report various forms of torture and inhuman and degrading treatment.[7] These allegations are confirmed by the interviews that the Special Rapporteur had with various refugees whom he met during the year. Violations of human rights affecting persons in detention and lack of due process of law are extensively documented in recent non-governmental publications.[8]

23. Freedom of expression and association and access to information are impeded by the closed nature of the State and rigid control over information flows and the media. According to information received, in October 2006, the authorities threatened independent radio stations run by exiles and operated from another country. Another source indicates that the local police monitor sales of radios so as to ensure that they are pretuned to government stations and are sealed before they go on sale. However, despite prohibitions against listening to foreign programmes, the increasing number of radio sets available through nearby border trade opens the door to more access to foreign broadcasts. Those who have left the country also note that mobile phones are increasingly available in the border areas, providing opportunities for calls across the border.

24. In relation to freedom of association and assembly, one incident should be noted as a manifestation of the people's desire to express themselves and to seek accountability. One source reported that a mass riot by tradesmen took place on 17 December 2006 in Hoiryeong, North Hamkyong, when they were compelled to vacate market premises, even though they had paid reconstruction expenses to the authorities.[9] Calm returned after the market authorities negotiated a settlement.

25. Despite official claims that religious freedom is allowed, reports indicate the contrary. Indeed, any imputed liberalization on this front tends to be due to the lure of money, as noted by the Korean Institute for National Unification:

> The reason North Korea is changing its religious policy in terms of legal and institutional arrangements is to maintain religious repression internally amid deteriorating food shortage ... and the unruly social environment, while

[6] See "White Paper on human rights in North Korea 2006", Korean Institute for National Unification (Seoul, 2006).

[7] See Citizens' Alliance for North Korean Human Rights, "North Korea: Republic of Torture", December 2006 draft. See also *Amnesty International Report 2006: The State of the World's Human Rights*, Amnesty International (London, 2006).

[8] See for example David Hawke, *Concentrations of Inhumanity*, Freedom House (Washington, 2007); and *North Korea: A Case to Answer — A Call to Act*, Christian Solidarity Worldwide (London, 2007).

[9] Reported by *The Daily NK*, 17 December 2006.

expanding contacts with the international community through various religious channels. In short, North Korea is utilizing religion as a means of gaining foreign currency.[9]

26. On another front, human rights violations, in the form of abductions, have had a particularly profound impact on foreigners. A number of Japanese nationals were abducted in the 1970s, probably with the aim of using them to train spies or to use their identity for espionage purposes. While five individuals have returned to Japan, other cases remain unsolved, mainly owing to inadequate cooperation and follow-up on the part of the Democratic People's Republic of Korea.[10] Furthermore, there are longstanding cases of missing persons from the Republic of Korea who might have been abducted,[11] as well as more recent claims of abductions of other nationals from Thailand, Lebanon and some European countries.

27. It is incumbent upon the authorities of the Democratic People's Republic of Korea to ensure transparency and provide redress as expeditiously as possible. There were indications in mid-2007 that the authorities in these cases might be more willing to address the issue, with political commitment from the top.[12]

C. Asylum: rights pertaining to refugees and those seeking refuge

28. With regard to the asylum situation during the year, the Special Rapporteur was apprised that it was "a major business". There are many intermediaries exploiting those who seek refuge in other countries and this is interlinked with rampant human smuggling, trafficking and extortion. The exploiters range from criminals to public officials in various countries, given that asylum by its very nature concerns several countries and is a trans-frontier phenomenon. There is another message that resonates in this scenario: those who seek refuge should not be criminalized or penalized, because they are the victims whose rights need to be respected accordingly. Often they have no choice but to leave the country of origin by paying intermediaries, at times landing in dire situations.

[9] With regard to the Republic of Korea, Inter-Korean Red Cross talks have been a useful venue to help reunify families. In paragraph 59 of the previous report of the Special Rapporteur submitted to the Human Rights Council (A/HRC/4/15), references were incorrectly made to the International Committee of the Red Cross, they should read "Inter-Korean Red Cross talks" instead.

[10] See pamphlet entitled "Abductions of Japanese citizens by North Korea", Ministry of Foreign Affairs of Japan (Tokyo, April 2006). See also International Crisis Group, "Japan and North Korea: bones of contention", Asia report No. 100 (Seoul/Brussels, 27 June 2005). On 26 June 2007, the representative of Japan in the United Nations working group on enforced or involuntary disappearances stated "the six-party talks process is finally starting to become normalized, and currently working-level delegates of the International Atomic Energy Agency are visiting the Democratic People's Republic of Korea. In the joint statement of the six-party talks, the abduction issue is positioned together with the denuclearization of the Korean peninsula and the normalization of diplomatic relations with Japan and the United States as an objective to be achieved by the six-party talks. Japan believes that it is necessary that joint declarations are carried out on the nuclear issue as well as on the other areas in a well-balanced manner."

[11] *Bangkok Post*, 9 June 2007.

29. A number of issues deserve attention, now that more literature is available on the subject.[13] First, with regard to the issue of characterization and definition, there have long been debates on the status of those seeking refuge from the country; the Special Rapporteur has already addressed this issue to a large extent in his previous reports. Traditionally, a "refugee" is defined internationally as a person who has left his or her country of origin because of a "well-founded fear of persecution". A key principle of international law, that of "non-refoulement", is that refugees must not be returned to areas of danger. Even in cases where refugees have not left the country of origin for fear of persecution, if they fear subsequent persecution (e.g. fear of being punished if they are to be sent back to the country of origin), they may also be characterized as refugees, or more precisely refugees *sur place*. The underlying rationale behind refugee status is that the refugee is not protected by the country of origin and is thus entitled to international protection.

30. On analysis, many of those who have sought refuge from the Democratic People's Republic of Korea are refugees or refugees *sur place* under international protection. In the interviews which the Special Rapporteur has had throughout the years with scores of those who have sought refuge in neighbouring countries, a number of interviewees have indicated situations of persecution in the country of origin (e.g. a relative who fell out of favour with the authorities, with subsequent persecution of the whole family). A large number of the interviewees also indicated that they had left the country because of hunger and other forms of deprivation. Generally, persons suffering from hunger would not be identified as "refugees" unless the criteria for the classification as described above are fulfilled. In reality, many of the persons suffering from hunger can be seen as refugees *sur place*, because there is the threat of persecution or punishment if they are sent back to the country of origin, on the basis of their having left the country without the required exit visa. It is well known that, in the Democratic People's Republic of Korea, there is strict control over migration. People require an exit visa to leave the country, and face sanctions in the case of failure to abide by the national law.

31. The position stated in 2003 by the Office of the United Nations High Commissioner for Refugees (UNHCR) in a note on international protection needs of asylum-seekers from the Democratic People's Republic of Korea is still relevant today. According to UNHCR, when assessing the international protection needs of asylum-seekers, due consideration should be given to the following factors:

- The very serious human rights situation in the Democratic People's Republic of Korea
- The existence of groups which are particularly prone to persecution, in particular on account of their family or political background
- The practice of the Democratic People's Republic of Korea of penalizing unauthorized departures from its territory for political reasons, with punishment ranging from several weeks to several years or even execution
- The abusive conditions in "re-education" facilities.

[13] See for example International Crisis Group, "Perilous journeys: the plight of North Koreans in China and beyond", Asia Report No. 122, 26 October 2006; *The North Korean Refugee Crisis: Human Rights and International Response*, U.S. Committee for Human Rights in North Korea, Stephen Haggard and Marcus Noland (eds.) (Washington, 2006); "Life and Human Rights in North Korea", The Society to Help Returnees to North Korea and Citizens' Alliance for North Korean Human Rights, vol. 42, (Tokyo/Seoul, 2006).

32. Based on information available to the Office and without being able to screen citizens individually, the overall assessment of UNHCR was citizens leaving the Democratic People's Republic of Korea without authorization and in danger of deportation were generally considered to be in need of international protection; many of them could have qualified as refugees under the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto. Against this background, the group was therefore of concern to UNHCR, which reiterated the need for the absolute respect of the non-refoulement principle.

33. Recent reports have indicated that the punishments meted out to those forced back to the country of origin may have been reduced, partly because of the reform of the criminal law in 2004. The progressive development of the law has been observed in the White Paper on Human Rights in North Korea, 2006:[6]

> Article 47 of the 1987 Penal Code stipulated that anyone caught fleeing the country would be deemed as committing treason against the fatherland and be punished with a seven-year or heavier correctional labour punishment. But the revised 1999 Penal Code distinguished the act of border crossing into two categories. Simple acts of crossing of "those crossing the border illegally" would be punished with correctional labour for up to three years (Art. 17). Crossing the border "to flee from the country to another country or with the aim of toppling the Republic" would be sentenced to correctional labour for five to ten years. In more serious cases, correctional labour punishment for over 10 years or death sentences would be handed down, along with confiscation of all properties. Also, Article 233 of the revised 2004 Penal Code defines "border crossing" broadly as "those going and coming across the border" instead of "simple crossing" in the old Penal Code. Furthermore, the level of the mandatory sentence for the crime of "illegal going and coming across the border" was reduced from three years to two years of "labour training" punishment. Since two years of "labour training" is equivalent to one year of "correctional labour", the level of punishment was reduced from three years to one year of "correctional labour".

34. If the sanctions are being reduced, this is a constructive development, but it needs to be monitored further to assess whether there is genuine, systematic mitigation rather than ad hoc reduction of sentencing. Those who have left the country in search of refuge elsewhere should not be punished at all for having left the country without an exit visa. This would also help to fulfil the spirit of article 75 of the Constitution adopted in 1998, which states that "citizens shall have the freedom of residence and travel".

35. Several of the refugees interviewed by the Special Rapporteur had experience of forced return to the country of origin and the punishments inflicted. If those who had left the country were "first timers" without political affiliations, they would be questioned upon return without necessarily being punished. If they had left several times and were then forced to return, punishments would be increased accordingly, beginning with re-education and forced labour.[14] If they had access to religious groups or non-governmental organizations in neighbouring countries, they would be

[14] See also Norma Kang Muico, *Forced Labour in North Korean Prison Camps*, Anti-Slavery International (London, 2007).

punished severely, with long-term incarceration in political prisons for those seen as suspect by the Government.

36. Second, there is the issue of the responses on the part of first-asylum countries. At the national level, such countries have a tendency to shun the term "refugee" for national policy reasons so as to ensure that they have broad discretion in their treatment of the influx. While the euphemism " humanitarian cases" is relatively acceptable when applied to those seeking refuge, the term "illegal immigrants" should be avoided, since it stigmatizes the persons seeking refuge and criminalizes victims.

37. The handling of refugees from the Democratic People's Republic of Korea varies according to the country. Some countries forcibly return them, while others offer temporary refuge. Some countries do not prosecute them for illegal entry, while others do. Some countries keep them in detention in immigration jail or prison, while others keep them in closed facilities under the surveillance of military or intelligence personnel, even though they are not prosecuted as illegal immigrants. In the opinion of the Special Rapporteur, those who seek refuge should not be treated as illegal immigrants and should not be held in detention. Preferably, they should be in held open facilities and, if they are to be kept in closed ones, it should be a measure of last resort, complying with international standards, including the need to avoid indefinite incarceration, and be open to independent monitors, such as UNHCR, which should be allowed access to all areas where those who seek refuge may be present. Interestingly, some sources indicate that forced returns might have declined slightly after the various missile and nuclear tests in 2006, perhaps to show disapproval of the country of origin. However, international law requires that all countries adhere strictly to the principle of non-refoulement and treat those who seek refuge humanely.

38. Third, there is the issue of international burden-sharing. On the one hand, it is incumbent upon the international community to exert effective influence on the country of origin to address the root causes leading to outflows. On the other hand, the international community should help the first-asylum countries in finding durable solutions for the refugees. This may entail policy and resource support and resettlement options in other countries as appropriate. Some countries are already increasingly opening the door to resettle refugees from the Democratic People's Republic of Korea, at times directly from first-asylum countries or via other channels.

39. Fourth, the pattern of refugee arrivals is changing precisely because of the elasticity between the different practices of neighbouring countries. There is a kind of "push-down, pop-up" phenomenon whereby if one country takes a stringent approach towards those seeking refuge, the refugees seek access through intermediaries to other countries with a more lenient approach. From the interviews conducted by the Special Rapporteur with people arriving in various neighbouring countries, two patterns emerge. On the one hand, a number of people spend quite a long time (up to several years) in the first-asylum country before moving to another country. Some are smuggled into other countries while others become victims of various types of human trafficking, such as forced marriage, prostitution or forced labour. There is also a more recent trend of people who transit briefly (for a matter of weeks) a neighbouring first-asylum country before moving to another country. This is currently the situation in South-East Asia, where some countries are

witnessing a larger influx of refugees who have transited briefly a neighbouring country. Nearly all cases interviewed by the Special Rapporteur indicated that they or their relatives had either paid various intermediaries to help them flee the country of origin or promised to pay upon arrival in the final destination country.

40. Along the way, some public officials also profiteer from the situation through extortion; they refuse to release from detention those who have sought refuge unless they are paid accordingly. This also poses a dilemma to non-governmental organizations that seek to rescue them: should they pay up or desist from doing so? It is regrettable that, at times, these organizations are also classified as criminal when they are merely acting as human rights defenders. It is also regrettable that there is a "market value" attached to refugees, who are exploited in a "chain-enchained" manner: every step of the way, from the borders of the country of origin to the final destination country, there is a chain of actors who seek to exploit the needs of refugees and their "worth" in an enchained, slavery-like manner. The situation is all the more disquieting since the majority of those currently seeking refuge are women and children. This aspect is elaborated below in relation to the vulnerability factor.

D. Vulnerability: rights concerning specific groups

41. The previous reports of the Special Rapporteur dealt with the concerns of various groups that may be especially vulnerable in particular situations. This is the case of the women and children who are not part of the elite in the country of origin, bearing in mind the cross-cutting nature of women's rights.

42. A key dilemma is that the proportion of those seeking refuge are women and many have been subjected to human smuggling and/or trafficking. There may be various reasons for this phenomenon. First, smugglers and traffickers are deliberately targeting women. Some male refugees interviewed by the Special Rapporteur indicated that the exploiters prefer to smuggle women rather than men. Second, it is believed that neighbouring countries are less likely to punish women for illegal entry. Third, the intermediaries feel that women are more likely to fulfil their "contractual obligation" of paying for the smuggling services upon arrival in the destination country. Fourth, while previous caseloads were men, the current caseload may partly be the wives or families of the men who exited some time ago and who seek family reunification. In one case examined by the Special Rapporteur in 2006, the wife worked in a cemetery in a key first-asylum country before following her husband to the final destination country. Fifth, the shortage of women for marriage in some areas also exerts a pull factor for trafficking of women for the purpose of marriage and this may also imply less repressive applications of laws. However, there are a number of ensuing complications, such as whether the local authorities are willing to register the children of the marriage.

43. Another issue that has arisen in one final destination country is whether women refugees should be allowed to remarry after a period in the country, given that they are unlikely to reunify with the husbands who remain in the country of origin.

44. With regard to children, the recent analysis made by UNICEF on the situation of women and children in the country identified some constructive features of State policies:[1]

(a) The adoption of compulsory primary education and abolition of tuition fees as of 1956;

(b) The introduction of compulsory secondary education and the abolition of tuition fees as of 1958;

(c) The introduction of free education as of 1959;

(d) Compulsory 9-year education as of 1967;

(e) Compulsory 11-year education as of 1972;

(f) The law on nursing and upbringing of children (as a codification of the existing policy) as of 1976;

(g) Thesis on socialist education (as a codification of the existing policy) as of 1977;

(h) Free compulsory education for 11 years, including for children with disabilities, as of 1977 and 1999.

45. However, the problem lies in the quality of education, which is further hampered by the decline in school facilities. Education is also a key instrument of indoctrination of the population, with children utilized for political ends from a young age, including through rigid State control over nurseries and kindergartens. A particular concern is the manner in which violence is inculcated in children from a young age as part of the patriotic message to fight the so-called enemies of the country.

46. Various issues concerning child survival, development, protection and participation still need more effective responses from the authorities of the Democratic People's Republic of Korea. Access to food remains a key concern (see sect. A above). Child protection and participation are greatly tested when the children face situations of violence, deprivation, neglect and abuse, especially when the children do not belong to the elite. This is particularly the case for children with disabilities and street-children who might be subjected to substandard institutionalization. The current critical food shortage is also likely to have a severe impact on adults who do not have access to the public distribution system and/or external aid, the decline of which has made elderly persons more vulnerable to deprivation.

E. Responsibility: rights concerning the responsibility of the State authorities to protect human rights and freedoms, and related accountability

47. A key issue raised by many sources in 2006/07 was that of the responsibility of the authorities of the Democratic People's Republic of Korea for egregious human rights violations. The scenario was rendered more volatile by the missile and nuclear tests carried out by the country, which led to unanimously adopted Security Council resolutions imposing a range of sanctions on the country. Interestingly, in the preamble to Security Council resolution 1718 (2006) imposing such sanctions, the issue of human rights is implicitly referred to by the emphasis on "other security and humanitarian concerns of the international community". In December 2006, in its resolution 61/174, the General Assembly expressed very serious concern at

continuing reports of violations, including torture, cruel, inhuman and degrading treatment, public executions, extrajudicial and arbitrary detention, the absence of due process of law and rule of law, forced labour; punishment of refugees forcibly returned from abroad, severe restrictions on freedoms of thought, conscience, religion, opinion, expression, peaceful assembly and association and access to information; violations of women's rights, such as human trafficking; abductions of foreigners; and violations of the rights of persons of disabilities, including their detention in collective camps.

48. The General Assembly expressed its concern at the failure of the Democratic People's Republic of Korea to cooperate with the Special Rapporteur and called for reports from both the Secretary-General and the Special Rapporteur at the sixty-second session. This may be an opportunity not only to provide the human rights situation analysis which the Special Rapporteur has undertaken to date, but also to open the door to other policy options in the context of the United Nations system as a whole.

49. The non-governmental sector has put forward a number of ideas to address the human rights situation in the Democratic People's Republic of Korea. Some entities prefer a softer approach of engagement based on continuing humanitarian aid, while others advocate a harder approach, stressing responsibility and accountability. An example of the latter is based upon the notion of the State's responsibility to protect people from egregious violations. This was introduced in the 2005 World Summit Outcome (General Assembly resolution 60/1, paras. 138 and 139), which set apace a series of United Nations reforms. The responsibility to protect civilians was subsequently reaffirmed by the Security Council in its resolution 1674 (2006).

50. The authors of a study conducted in 2006 contend that the misdeeds of the authorities are tantamount to crimes against humanity, fulfilling the conditions of intent and widespread or systematic attacks on the civilian population.[15] The evidence of crimes against humanity includes persecution and starvation. The authors of the study advocate that the Security Council should adopt a non-punitive resolution under Chapter VI of the Charter of the United Nations calling for accountability on the part of those authorities, given that the misdeeds amount to a non-traditional threat to international peace and security, as exemplified by a wide array of human rights violations, refugee outflows and various criminal acts. If the country fails to comply with such a resolution, further action may be needed under Chapter VII of the Charter.

51. While the study is aimed primarily at State responsibility towards its people, it also points to the individual criminal responsibility which may ensue from crimes against humanity. The question is elaborated upon extensively in the Statute of the International Criminal Court; there is already copious jurisprudence on the issue, from various ad hoc international criminal tribunals, such as the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. Of relevance is article 7 of the Rome Statute, which lists a number of acts classified as crimes against humanity, including murder, deportation or forcible transfer of population, torture, enforced prostitution, persecution against any

[15] "Failure to Protect: a call for the UN Security Council to act in North Korea", U.S. Committee for Human Rights in North Korea (Washington, 2006).

identifiable group or collective on political, and other grounds, and enforced disappearance of persons.

52. Other recently published studies have argued the case for individual criminal responsibility on the part of the authorities of the Democratic People's Republic of Korea.[15] They underline various prohibited acts equivalent to crimes against humanity, including enforced disappearance, deportation and arbitrary imprisonment, enslavement and forced labour, murder, torture and other inhumane acts, rape and enforced prostitution, persecution and extermination. There has also been a call for the United Nations to establish an international commission of inquiry to investigate international crimes in the context of the Democratic People's Republic of Korea.[16] It remains to be seen whether this advocacy will gather momentum.

III. Communications

53. The Government of the Democratic People's Republic of Korea did not reply to a communication, sent by the Special Rapporteur on 18 August 2006, concerning the case of a male national of the Republic of Korea who had reportedly been abducted by a patrol boat of the Government of the Democratic People's Republic of Korea with 11 other crewmen of a fishing boat in 1987.

54. On 22 February 2007, the Special Rapporteur sent a communication concerning two soldiers of the Democratic People's Republic of Korea who were reportedly at risk of imminent execution. It was the understanding of the Special Rapporteur that the soldiers were the commander and the vice-commander of a border post near the town of Hoeryong in North Hamgyong Province. They were reportedly arrested following a Government investigation into the flow of citizens of the Democratic People's Republic of Korea into a neighbouring country, then tried and sentenced to death for assisting citizens of the Democratic People's Republic of Korea to make unauthorized visits to the neighbouring country. The Government of the Democratic People's Republic of Korea did not reply to this communication.

IV. Observations and recommendations

55. **The current situation of human rights in the Democratic People's Republic of Korea reveals a** number **of key violations in a variety of fields. The present report has analysed them from the angle of sustenance (rights pertaining to food, nutrition and related matters); freedoms (rights pertaining to security of the person, humane treatment and justice); asylum (rights pertaining to refugees/those seeking refuge); vulnerability (rights concerning specific groups); and responsibility (rights concerning the responsibility of the State authorities to protect human rights and fundamental freedoms, and related accountability).**

56. **The environment for the promotion and protection of human rights was further undermined in 2006 by the missile and nuclear tests carried out by the**

[16] See *North Korea: A Case to Answer — A Call to Act*, Christian Solidarity Worldwide (London, 2007).

country in the face of global condemnation and subsequent Security Council resolutions imposing sanctions on the country. The atmosphere in 2007 proved to be more encouraging, with the reported disablement of the nuclear facility in the Democratic People's Republic of Korea and progress in the six-party talks.

57. **Taking stock of the human rights situation at the ground level in the country, regrettably it is the ordinary people of the Democratic People's Republic of Korea who suffer at the hands of the authorities and who bear the brunt of a myriad of abuses that are both systematic and pervasive.**

58. **For the future, the Democratic People's Republic of Korea should take the following measures:**

- **Abide by its international obligations under the various human rights treaties to which it is a party, as well as international law, shift military expenditure to the human development sector and allocate national resources to protect human rights and human security**
- **Facilitate access to humanitarian aid, respect the need for monitoring to ensure that aid reaches target groups and build food security through sustainable agricultural development with broad-based people's participation**
- **Reform the prison system to prevent torture, and promote due process of law and the rule of law, such as safeguards for accused persons, fair trial and the building of an independent judiciary**
- **Address the issue of abductions/enforced disappearances effectively and provide redress to victims and their families**
- **Enunciate a clear policy of not punishing those who leave the country without permission, desist from punishing returnees, and amend the law and train its officials accordingly**
- **Tackle the root causes leading to refugee outflows and prosecute those who exploit them in the process of human smuggling, trafficking and extortion, while not criminalizing the victims**
- **Protect the rights of women, children and other groups, particularly by addressing their vulnerability and ending discrimination**
- **Act responsibly and accountably towards its population to prevent and curb human rights violations not only by means of law reform but also though substantive implementation of human rights in practice**
- **Allow the Special Rapporteur access to the country to assess the human rights situation at the ground level and to offer advice**
- **Engage sustainably with the various monitoring bodies under the human rights treaties to which the Democratic People's Republic of Korea is a party by following up their recommendations and inviting the treaty bodies to visit the country to support improvement**
- **Seek technical assistance from the Office of the United Nations High Commissioner for Human Rights to help promote and protect human rights in the country.**

59. **The international community is invited to take the following measures:**

- **Continue to provide humanitarian aid, especially food aid, on the basis that it must reach the target groups ("no access, no aid"), coupled with relevant monitoring**
- **Respect the rights of refugees, particularly the principle of non-refoulement, desist from forcibly returning them to the country of origin, and exempt them from the strictures of national immigration laws, which might otherwise lead to the detention of refugees or those seeking refuge**
- **Utilize dialogue and other interaction to engage with the Democratic People's Republic of Korea to protect and promote human rights, with relevant incentives, graduated influence, and economic and security guarantees where appropriate**
- **Mobilize the totality of the United Nations system to promote and protect human rights in the country and support processes which concretize the responsibility and accountability of the authorities of the Democratic People's Republic of Korea for human rights violations in order to bring an end to impunity.**